

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

UNITED STATES OF AMERICA

v.

CRIMINAL ACTION NO. 2:07-00228

SEBERT JUNIOR MAXWELL III

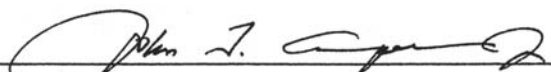
O R D E R

Pending before the Court is a motion filed by the defendant pro se on September 12, 2011, brought pursuant to 18 U.S.C. § 3582(c)(2), to reduce Defendant's sentence based on a subsequent reduction in the applicable sentencing guideline. On November 1, 2010, pursuant to the Fair Sentencing Act of 2010, the United States Sentencing Guidelines were amended resulting in reductions in the guidelines in Section 2D1.1 for cocaine base. These temporary, emergency amendments to the Guidelines took effect on November 1, 2010. Permanent amendments implementing the Act were promulgated on April 6, 2011, with an effective date of November 1, 2011. Subsequently, the Sentencing Commission voted to give retroactive effect to the permanent amendments.

The defendant was sentenced on April 30, 2008, to a period of 151 months imprisonment as a career offender pursuant to U.S.S.G. § 4B1.1(a) and (b). An additional consecutive 6 months was imposed upon revocation of supervised release. Inasmuch as defendant's guideline range was not calculated pursuant to the pre-amended version of U.S.S.G. § 2D1.1, he is not entitled to relief under the retroactive amendment that modified that guideline section. The court, accordingly, **ORDERS** that defendant's motion to modify sentence be, it hereby is, denied.

The Clerk is DIRECTED to send a copy of this written opinion and order to the defendant, the United States Attorney, the Federal Public Defender, and the United States Probation Office.

ENTER: April 18, 2012



John T. Copenhaver, Jr.
United States District Judge